

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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September 10, 2008

Opinion No. 08-146

State Trooper Running For Sheriff

QUESTION

Whether a state trooper may run for the office of sheriff without violating the federal Hatch Act.

OPINION

If the state trooper's position or duties are in connection with an activity financed in whole or in part by federal loans or grants, then the federal Hatch Act would prohibit him from running for the office of sheriff unless he first resigned from state employment.

ANALYSIS

A state trooper has expressed an interest in running for the office of Sheriff. You have asked whether this would be in violation of the federal Hatch Act. The Hatch Act limits the political activity of federal, state and local employees. With respect to state and local employees, it provides that a "[s]tate or local officer or employee may not . . . be a candidate for elective office." 5 U.S.C. § 1502(a)(3).¹ "State or local officer or employee" is defined as

an individual employed by a State or local agency whose principal employment is in connection with an activity, which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include –

¹ Section 1502(a)(3) does not prohibit a state or local officer or employee from being a candidate in a nonpartisan election. See 5 U.S.C. § 1503. The election for county sheriff is a partisan election.

- (A) an individual who exercises no functions in connection with that activity; or
- (B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

Whether the federal Hatch Act applies to the state trooper in question would thus depend on whether the trooper's position is in connection with an activity financed in whole or in part by federal loans or grants. The Office of Special Counsel is authorized to issue advisory opinions about the political activity of state or local officers and employees. 5 C.F.R. § 1800.3 (copy attached); *see also Special Counsel v. Alexander*, 71 M.S.P.R. 636 (1996), *aff'd*, 165 F.3d 474 6th Cir. 1999), *cert. denied*, 528 U.S. 809, 120 S.Ct. 40, 145 L.Ed.2d 37 (1999). The Merit Systems Protection Board has the authority to determine whether a violation of the Hatch Act has occurred, determines whether the violation warrants removal of the employee and notifies the employee and affected agency of the determination. 5 U.S.C. §§ 1504 and 1505.

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Requested by:

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